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COMMITTEE ON ECONOMIC, SOCIAL
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Fourth session
15 January - 2 February 1990

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Four Directions Council, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolutions 1296 (XLIV) and 1988/4.

[22 December 1989]

CRITERIA FOR EVALUATING THE RIGHT TO WORK

1. Article 6 of the International Covenant on Economic, Social and Cultural Rights refers to the right to work, which includes the right of everyone to gain his living by work which he freely chooses or accepts. This requires something different from "full employment". It implies, first, freedom from coercion or bondage, comparable to Article 8 of the International Covenant on Civil and Political Rights. It also suggests that people have choices among alternative forms of employment, and are satisfied with those choices. In other words, the jobs which are available in society are jobs that people want to have.

2. State reports all too often address Article 6 in ideological terms, arguing that because they have a free-market economy, or a centrally-planned economy, everyone therefore enjoys the right to work. Such ex hypothesi arguments should be unacceptable for two reasons. To begin with, no

real-world economic system is purely market or non-market; all involve elements of both State planning and individual choice. It is therefore meaningless to classify economies as being of one or the other kind, much less to argue that this classification alone responds to questions regarding the quality of employment.

3. The only valid way of evaluating the enjoyment of a right is moreover through output rather than input measures: not how much the State does, or what it does, but whether it works. The real question is whether people are satisfied with their work, and not what economic policy the State chooses. If people are growing more satisfied with their work, the State's policy (whatever it is) must be appropriate; if not, the State has chosen its policy poorly.

4. The task for the Committee on Economic, Social and Cultural Rights is therefore not, in the first instance, to evaluate State employment policies, but to persuade States to collect and submit appropriate information on worker satisfaction.

5. Conventional indicators of unemployment and underemployment will not be helpful here, since the question is one of quality as much as, or more than, of quantity. Definitions of "employment" are highly biased in favour of full-time, year-round wage work. They omit the informal sector, barter, subsistence activities such as hunting, fishing and farming, and mixed seasonal work of a flexible and diversified nature which is sometimes referred to in French as "bricolage", i.e. odd jobs. These strategies may be just as life-sustaining and more satisfying than full-time wage work.

6. Conventional measures of unemployment and underemployment therefore assume that a steady stream of income (income security) is preferable to forms of work that might involve more personal freedom, a greater degree of personal control over conditions of work, greater satisfaction and prestige, higher aggregate income, and more leisure time. This is a serious, essentially European cultural bias.

7. It should also be apparent that conventional measures are biased in favour of capital-intensive industrialization, which in turn implies dependence on foreign capital, and the choice of a top-down rather than bottom-up approach to development strategy. They encourage developing countries to "create jobs" rather than to increase meaningful work and worker participation. They also give industrialized countries - particularly those with a large proportion of underpaid or low-status wage jobs - an undeservedly high standing.

8. Concrete examples of these measurement problems can be found among indigenous communities in North America. Indigenous North Americans traditionally lived by diversified, seasonal activity. The same family would hunt, fish, and farm at different times of the year, as resources became available. This economic strategy required occasional bursts of great physical exertion, offset by long stretches of leisure time, which supported a rich social and cultural calendar.

9. During the early stages of European settlement, indigenous people provided much of the labour for seasonal activities such as logging, cattle herding, harvesting crops, and fishing. Because of its seasonal character, this kind of integration into the settler economy was consistent with the preservation of their own cultural institutions and social life.

10. The industrialization of North America has diminished the availability of seasonal work, and this has forced indigenous people to choose between full-time employment, usually in urban areas, and full-time unemployment if they remain in their own communities.

11. North American Governments have responded to the poverty which is apparent in indigenous communities by seeking ways of creating full-time wage employment. They are often frustrated when, in those few cases in which jobs have been made available through subsidized industrialization, very few indigenous people accept them, or keep them for more than a few months. This has unfortunately been attributed to laziness or backwardness on the part of indigenous societies. On the contrary, indigenous North Americans often prefer seasonal work, even if it is physically more demanding or requires greater skill, because it gives them greater freedom, and more time for cultural activity. They may prefer harder, lower-paid work, to work that involves dependance on strangers or a foreign corporation.

12. An indigenous community may therefore receive an expensive manufacturing plant, in connection with a well-intentioned, top-down development programme, and still lack the right to work.

13. In fact, most full-time jobs on "reserves" or "reservations" in North America today are in the public sector, administering programmes for the relief of indigenous peoples' poverty. Little or no development assistance is given to the poor, who continue to subsist by "bricolage". Instead, employment growth is limited to the bureaucracy. It can therefore be argued that any increase in full-time employment in indigenous communities represents the growth of an elite bureaucratic class, rather than broad-based community development.

14. It should be noted that, since conservative governments were elected in both the United States and Canada, financial aid for indigenous bureaucracy has diminished steadily, and unemployment rates for indigenous people (conventially measured on the basis of full-time work) have risen significantly. This may bear some comparison to the adjustments which have occurred in developing countries in the 1980s. Whether the unemployment rate went up or down, however, indigenous peoples' control over, and satisfaction with their work appears to have fallen.

15. In summary, adequate indicators must be subjective - that is, based on the perceptions of the persons affected. This approach incorporates factors such as the social value of work, freedom of choice and worker control, rather than limiting the analysis - as do conventional measures of employment - to income continuity and income security.

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READEX

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COMMITTEE ON ECONOMIC, SOCIAL
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Fourth Session
15 January - 2 February 1990

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Habitat International Coalition,
a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolutions 1296 (XLIV) and 1988/4.

[10 December 1989]

1. Habitat International Coalition (HIC) is an alliance of more than 250 non-governmental and community-based organizations from 60 countries, each concerned with various aspects of housing. Founded in 1976, HIC's major objective is the recognition and implementation of the right of everyone to secure a place in which to live in conditions of peace and dignity.

A. DEFINING THE RIGHT TO ADEQUATE HOUSING

2. Although the right to housing can be found in a great variety of international human rights instruments, a clear, concise and acceptable definition of this fundamental right will have to be agreed upon. HIC believes that without a legal definition of this right, the likelihood of it ever achieving its potential utility is greatly diminished. The Committee is one of the most important international human rights body concerned with, inter alia, the right to adequate housing and it has significant legal and

creative responsibilities which can be exercised towards the ultimate realization of this right for all who possess legal entitlements to it.

3. HIC applauds the increasing consideration and attention the Committee on Economic, Social and Cultural Rights continues to place on the right to housing. Nevertheless, the Committee could play an even more useful function if it were to give greater legal substance to this right. We realize, of course, that the right to housing is a complex right and one which will require substantial scrutiny before an acceptable "definition" is found. In order to assist the Committee with its work surrounding the human right to adequate housing, HIC would respectfully like to offer several points for consideration.

1. What the right to housing does not mean

4. Through HIC's International Campaign for Housing Rights we have learned that there are some popular misconceptions of the right to housing. In order to clarify some of these, the right to housing does not mean that:

(a) Housing is to be provided to all persons free of charge;

(b) Housing is to be seen primarily as a commodity;

(c) Housing problems will be inevitably solved by market, planned or mixed economies. None of these systems has led to the full realization of the right to housing;

(d) All elements of housing rights are subject to immediate implementation;

(e) The qualitative enjoyment of housing rights are solely dependent upon an individual or family's income;

(f) The right to housing is exclusively a right of families exclusive of individual needs;

(g) Acceptable standards of housing will be the same throughout the world.

2. What the right to housing does mean

5. The complexity of housing rights makes it impossible to cover all aspects of this right in this short submission. Still some points can be made as to what the right to housing does mean in legal terms:

(a) Housing is a fundamental basic human need relevant to all human beings. The "core contents" of this right must recognize that every person requires housing which is (i) secure; (ii) safe and decent for health, including the immediate environment; (iii) affordable; (iv) accessible; (v) culturally adequate; (vi) free from discrimination and of such a form that it does not detract from one's dignity as a human being; (vii) properly located with easy access to basic services and infrastructure; (viii) possessive of a physical quality which promotes well-being;

(b) The obligation to respect the right to housing includes protection against eviction, harassment or interferences of rights to privacy or the right to participate in any decisions which relate to one's housing or community situation.

(c) The obligation to protect the right to housing includes the right to be protected against actions and inactions of others which impinge on the enjoyment of this right such as arbitrary rent increases by landlords (whether public, private or otherwise), any form of discrimination by any entity, eviction or harassment, tolerance of inadequate or minimum housing standards (particularly by property owners who may have a statutory duty in this respect), any action which prohibits or discourages the free association of non-governmental organizations and community-based organizations, etc.

(d) The obligation to fulfil the right to housing includes the duty of taking whatever necessary measures for the fulfilment of this right such as monitoring and regulating land markets, implementing "enabling policies", the granting of tenure security to "illegal" settlements, regulating the housing market in general and the rental sector and rent levels in particular, guaranteeing through financial and other means the provision of housing resources to homeless persons, eradicating all forms of discrimination in the housing sector, etc.

(e) Several "benchmarks" which may be used by the Committee in establishing compliance with the right to housing could include:

(i) The adoption of justiciable legislation leading towards the full enjoyment of the right to housing for all sectors of the population and the repeal of legislation which clearly inhibits housing rights from being realized;

(ii) The percentage increase or decrease over the last five years of persons: inadequately housed in any form whatsoever, made homeless for any reason, evicted from their homes for any justification, subjected to any form of discrimination in the housing sector;

(iii) The conferral of tenure security to all segments of the population realizing the central importance of tenure to the realization of housing rights;

(iv) The percentage increase or decrease of public expenditure as a portion of the Gross National Product and State budget on the fulfilment of the right to housing, disaggregated according to income groups of the population;

(v) The provision of basic infrastructure and social and other services inherent in the right to housing, etc.

These few examples are merely illustrative of what could be done.

B. EVICTIONS

6. Evictions (also referred to as forced removals, resettlements, displacements, clearances, etc.) constitute the most grevious violation of the

right to adequate housing. The human rights implications of evictions are abundantly clear, and in the instances of South Africa and Israel, this has been recognized and condemned in United Nations resolutions. Evictions are far from taking place in these two countries alone. In one form or another, this is a phenomenon which affects many countries, even though the United Nations Vancouver Declaration on Human Settlements states that undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made. HIC accepts that in some situations and with certain circumstances met (such as rehousing at a mutually agreed upon location and at which living conditions do not worsen), evictions may be justifiable. Yet in many instances, evictions are carried out with insufficient warning, inadequate legal protection and often accompanied by violence.

7. For the past two years, Habitat International Coalition has been collecting evidence and information about evictions from all corners of the earth and from all regions. Our data gathering is thus far certainly not exhaustive. None the less, we have documented mass and forced evictions in more than 12 different countries. HIC has carried out on-site fact-finding missions in 3 of these States. Combined data from the 12 States alone (9 of which are States parties to the Covenant on Economic, Social and Cultural Rights), reveals that the 1980s has been witness to over 3 million persons being evicted from their homes against their will.

8. In the reports from States parties which the Committee monitors, HIC has noticed no mention of evictions. HIC urges the Committee to permanently include inquiries into the phenomenon of evictions when questioning States parties on issues relevant to article 11 of the Covenant.

C. GENERAL DISCUSSION

9. HIC is encouraged by the new practice of the Committee of holding "general discussions" on certain rights or articles found in the Covenant. The initial general discussion on article 11 held during the third session of the Committee was a fruitful and precedent-setting initiative. Yet, due to lengthy presentations and discussion of the right to food as found in this article, virtually no time was accorded for the other constituted rights of article 11, including the right to housing. We applaud the Committee's decision of allowing an expert to speak briefly on some of the issues surrounding the right to housing last year. However, this short statement is, in our view, clearly insufficient. During the first general discussion, there was no time allotted to crucial discussions amongst Committee members about the right to housing.

10. HIC strongly urges the Committee to complete the unfinished discussion of article 11 at this year's fourth session, by allocating sufficient time and resources to consideration equal to that provided to the right to food, yet this year concerning the right to adequate housing.

D. GENERAL COMMENTS

11. HIC is pleased with the practice of "general comments" by the Committee. The first such comment on "Reporting by States parties" provides valuable insight and clarity about some of the legal obligations of States parties to the Covenant.

12. The Human Rights Committee inevitably plays a variety of roles. One of the most important are the pronouncements this body makes about the legal nature of the Covenant. As the Committee has revealed through its practice of general comments, these can add significant clarity and judicially based insight into the nature of the rights which this and other bodies are obliged to monitor. General comments can and should assist in the legal interpretation of both the entitlements and the State obligations inherent in certain rights, which is more precise than the often vaguely worded passages of the Covenant or other instruments.

13. The Committee's work or pronouncements on the Covenant have ramifications for the entire United Nations system and international law in general. Conversely, the Committee must take into account relevant developments in these other human rights organs. In this respect we urge the Committee to pay special attention to the statement made in the Preliminary Report of the Special Rapporteur on Economic, Social and Cultural Rights, Mr. Danilo Turk, where it is stated in paragraph 73 that "... the rights relating to housing remain without clear indication as to their substance, and there is a clear need to develop clearer standards in this area - taking into account the complex nature of the problem and the very different situations in which it occurs" (E/CN.4/Sub.2/1989/19) (emphasis added).

14. HIC thus requests in accordance with paragraph 330 of the Committee's Report of its third session, that the Committee give priority to the adoption of a general comment on article 11 of the Covenant.

E. GUIDELINES FOR STATES REPORTS

15. While HIC is well aware of and accepts many of the reasons and arguments supporting a revision of the existing guidelines for States reports, we also feel that over-generalization of the guidelines as opposed to giving them greater specificity, can lead to several problems. Part of this purpose of the existing guidelines, however inadequate they may be, is to provide at least some degree of precision as to what each of the rights in the Covenants imply in legal terms. This is of special importance in view of the frequently heard criticism about the lack of specificity given to many economic, social and cultural rights. This vagueness may lead to States sensing they have more or less free rein in determining both what this right means and how to go about enforcing it, if indeed they choose to actively do so.

16. HIC feels quite strongly that broad guidelines such as those found in the draft proposal of the third session, if adopted by the Committee, may serve to trivialize the more detailed elements of the rights in question, including the right to adequate housing. For instance, in the draft revised guidelines, it is said that States should "provide detailed statistics as to the extent to which the right to ... is not currently enjoyed by all individuals". If no mutually agreed-upon interpretation of a right exists, phrases such as these merely serve to reinforce the status quo. HIC sincerely hopes that the interests of efficiency and streamlining of efforts will not impede the true realization of the rights found in the Covenant.

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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the International Organization for the Development of Freedom of Education (OIDEL), a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolutions 1296 (XLIV) and 1988/4.

[21 September 1990]

SUMMARY

Freedom of education is a public freedom protected by 13 international instruments. We shall examine the freedom of education here on the basis of the text of the International Covenant on Economic, Social and Cultural Rights, but shall make use of other instruments that assist towards a better understanding of the terms of the Covenant.

According to the Covenant, freedom of education comprises four rights:

(1) The right of parents or legal guardians to choose education centres other than the public centres for their children;

(2) The right of parents or legal guardians to ensure the religious education of their children in conformity with their own convictions;

(3) The right of individuals and bodies to establish education centres;

(4) The right of individuals and bodies to direct education centres.

* * *

1. Freedom of education is a public freedom which, according to G. Burdeau, brings three concepts into cohabitation: "that of the right to teach, that of the right to learn and that of the right to choose one's teacher ... It will be seen that, in this way, freedom of education involves, at one and the same time, freedom of opinion (the right to teach), the equality of individuals (the right to learn) and freedom of conscience (the right to choose one's teacher)" (G. BURDEAU, Les libertés publiques, 2nd edition, Paris, 1958, pp. 262-263; translation by the United Nations Secretariat).

2. This freedom is protected by 13 international instruments, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the United Nations Convention on the Rights of the Child, the UNESCO Convention and Recommendation against discrimination in education, the joint UNESCO/ILO Recommendation concerning the Status of Teachers, the European Convention (of the Council of Europe) for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights (of the Organization of American States), the Resolution of the European Parliament on Freedom of Education in the European Community and the Concluding Document of the Vienna Meeting of the Conference on Security and Co-operation in Europe (CSCE). (The texts of these instruments are reproduced in the annex.)

3. We shall study freedom of education here on the basis of the text of the Covenant on Economic, Social and Cultural Rights, but shall make use of other instruments that assist towards a better understanding of its terms.

4. The Covenant proclaims the freedom of education in article 13, paragraphs 3 and 4:

"The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

5. "No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

6. According to these texts, freedom of education comprises four rights:

(a) The right of parents or legal guardians to choose education centres other than the public centres for their children;

(b) The right of parents or legal guardians to ensure the religious education of their children in conformity with their own convictions;

(c) The right of individuals and bodies to establish education centres;

(d) The right of individuals and bodies to direct education centres.

7. The first two rights use the language of the Universal Declaration of Human Rights, article 26 of which affirms that "parents have a prior right to choose the kind of education that shall be given to their children". The formulation of paragraph 3 might seem redundant, for it speaks of a choice that may overlap another: the choice of a school is often determined by religious or moral convictions. Indeed, other international instruments such as the International Covenant on Civil and Political Rights speak only of respecting "the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions" (art. 18, para. 4). The European Convention for the Protection of Human Rights and Fundamental Freedoms speaks on the same lines in its First Protocol, article 2: "the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions". The American Convention on Human Rights of 1969 formulates this right in a similar manner (cf. art. 12, para. 4).

8. The text of the Covenant goes further and follows the Universal Declaration of Human Rights more closely, for the parents' right to choose should not be limited to the ethical or religious field or to convictions; freedom of education also concerns the kind of education. This is a wider concept, for it may refer to pedagogical content or to the school's own character.

9. Furthermore, in speaking of schools "other than those established by the public authorities", the text further indicates that it should be possible to exercise this choice between State schools and schools due to private initiative, and hence that establishments not directed by the State should exist.

10. This double choice also figures in the UNESCO Convention and Recommendation of 1960 against discrimination in education. Drawing the same distinction as the Covenant, the Convention affirms that: "It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities ... and, secondly, to ensure ... the religious and moral education of the children in conformity with their own convictions" (art. 5, para. 1 (b)). The legislator clearly had two separate things in mind: it should be possible to choose between public and private according to the kind of education (cf. Universal Declaration, art. 26) and, as one variant of that kind of education, it should be possible to select from among the establishments the one that corresponds to the parents' ethical and/or religious convictions.

11. It should also be emphasized that the parents have this right with precedence over the State. This is explicitly affirmed by the Universal Declaration (art. 26, para. 3); the Declaration of the Rights of the Child (principle 7); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (art. 5, paras. 1 and 2); the Convention on the Rights of the Child (art. 18, para. 1); and, indirectly, the European Convention (First Protocol, art. 2).

12. These rights, however, would remain purely theoretical if States did not make them financially feasible. Therefore, even if this is not explicitly stated, the right to choose presupposes that it can be exercised without economic constraint; and this implies that the State should provide for the financial needs of schools "other than those established by the public authorities". This is particularly plain from the Convention and Recommendation against discrimination in education, which is concerned with measures to prevent discrimination against certain populations. If the right to choose is granted but cannot be exercised for financial reasons, there is ipso facto discrimination. Even where it is not made explicit, this concern to combat discrimination is evident in all instruments for the protection of human rights. Thus article 2, paragraph 2, of the Covenant states that "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to ... property".

13. An international instrument of regional scope, but one which is specific concerning this freedom, the European Parliament Resolution on Freedom of Education, throws a clear light on the question so vital to freedom which is under discussion here. "The right to freedom of education," says the Resolution, "implies that the Member States are under an obligation to make the practical exercise of this right financially feasible also and to grant schools the public subsidies necessary to the performance of their task and the fulfilment of their obligations under conditions equal to those enjoyed by public establishments" 1/ (para. 9).

14. According to the European Parliament text, the right to freedom of education implies, in order to make it possible for the right to be exercised in practice without discrimination, the financing of non-public centres out of public funds.

15. The Covenant recognizes two further rights: that of establishing centres, and that of directing them. Two restrictions are imposed on these rights in order to prevent them from conflicting with others. Such private centres should: (1) respect the basic principles which should guide education, as enumerated in article 13, paragraph 1 (full development of the personality, respect for human rights, etc.), and (2) respect the minimum standards of the State. The Convention and Recommendation against discrimination in education mention the same restrictions (cf. art. 5, para. 1 (b) and (c)).

16. The rights to establish and to direct centres are directly linked to freedom of expression. This aspect of freedom of education, which appears in most of the international instruments, is not dealt with in the Covenant.

1/ In the absence of the English text of this Resolution, the passages quoted from it have been translated by the United Nations Secretariat.

17. When the right to choose was under discussion, mention was made of freedom of thought. But the school is one of the means of expressing thought. The Universal Declaration, in its article 18, regards it as the first manifestation of freedom of expression: "Everyone has the right to freedom of thought, conscience and religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The International Covenant on Civil and Political Rights (art. 18) and the European Convention (art. 9) confer a similar role on education.

18. Although the Covenant does not explicitly link freedom of education with freedom of expression, the wording of article 13, paragraph 4, suggests such a link, for it makes it unlawful to interfere with the liberty of individuals and bodies to establish centres by imposing requirements concerning respect for human rights, minimum standards for education or other rights. The same idea is embodied in the Convention on the Rights of the Child (art. 29, para. 2) and the UNESCO/ILO Recommendation of 1966 concerning the Status of Teachers (IV para. 10 (c)).

19. These rights, however, like the previous two, would remain a dead letter without financial aid from the State. The reader is reminded of the European Parliament Resolution already quoted, which emphasizes the need to grant private schools "the public subsidies necessary to the performance of their task and the fulfilment of their obligations under conditions equal to those enjoyed by public establishments" (para. 9). However, in so far as this entails no discrimination, "some personal contribution" may be claimed from schools "established by private initiative, such contribution reflecting their special responsibility and being designed to strengthen their independence" (ibid.).

20. Lastly, a distinction should be drawn between the right to establish schools and the right to run them, for they are two different rights: the right to promote centres and the right to direct them. Two consequences of these rights seem to us to be particularly important:

(a) The State may not arbitrarily limit the establishment of schools;

(b) Care should be taken to ensure that the aid contributed by the State to non-public establishments does not restrict the promoters' rights to direct those establishments.

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